

EDITORIALS.

LEGISLATIVE CONTENTION.

THERE appears to be some friction between the two Houses of the Legislative Assembly. Bills originating in the Council are sat down upon in the House, and bills born in the House are killed in the Council. It is said that some of this work of destruction is done in a spirit of retaliation. If so, it is wrong and to be utterly condemned. We have known, in years past, of individual members opposing any measure introduced by one who labored to defeat something they had introduced, feeling determined to "get even" with him for what they wrongly thought was personal hostility towards them. Anything of that kind is to be strongly deprecated. Nay more, it is to be thoroughly despised. It springs from the lowest instincts of fallen human nature. It is evil when occurring simply between individuals as a personal matter. But when it affects the public welfare it is vastly more reprehensible.

Remarks have been made in one part of the Assembly during the consideration of measures that have come from the other chamber, which give color to the report that such a feeling exists. Even if they are only uttered in jest, they are, in our opinion, quite out of place, and do not add to the dignity which belongs to deliberative bodies. Every bill presented, no matter by whom or in what part of the Assembly, should be considered on its merits, and should stand or fall on its necessity, adaptability to public requirements, conformity to existing laws and fitness to sound policy. When personal feelings are permitted to intrude and hinder or prevent the passage of legislation which would be a public good, the respect which is due to the faithful legislator will be supplanted by scorn and disgust.

We hope that the impression which has gone abroad is not founded in fact, and that the course of the Legislature during the remainder of the session will remove it from the public mind. There is but a little time left for public business, and we trust that it will be put to the best possible use by the gentlemen elected to subserve the public interest.

POLYGAMY AND THE COMMON LAW.

IN passing sentence upon E. H. Tracy for unlawful cohabitation under the Edmunds Act, in the First District Court, on Thursday, Judge Powers delivered a long lecture which the defendant had to take as part of his punishment, although it is not included in the penalties prescribed by law. Fine and imprisonment are quite sufficient without the infliction of a string of fallacies, often in the nature of a heavy chastisement, which Utah Judges delight in inflicting upon helpless victims.

In the course of his discourse, Judge Powers repeated a remark that has frequently been made of late in Utah and in other places, which exposes the ignorance of those who utter it. Judge Hays of Idaho buried it at the gentlemen whom he sentenced to prison for living with their wives. We quote Judge Powers as reported in the *Ogden Herald*. Speaking of polygamy, and cohabitation which he defined as "the result of bigamy and polygamy," he said:

"The offense was a crime at the common law, and consequently was always an offense in the United States. It has always been illegal."

This was advanced by way of reply to the remarks of Mr. C. C. Richards. Mr. Tracy's attorney, who showed, in a respectful and logical speech, that the offense was committed in 1883, at a time when there was no construction of the Edmunds law, and no one here had any such conception of constructions as have since been put upon the law by the courts. Judge Power's remarks had no application to the argument of the attorney. But they do apply to the claim that many persons in Utah entered into the practice of plural marriage before there was any law in Utah against it. Let us see how far it meets this claim.

The law of 1862 was the first statute that made bigamy, as therein defined, an offense against the United States. And it had no application outside of the Territories and the District of Columbia. In any State of the Union, bigamy and polygamy even in their worst, that is their really criminal form, can be practiced without violating any law of the United States. Each State makes its own laws on this matter. There is no general law of the land which makes either bigamy or polygamy a crime. The law of 1862 and the Edmunds Act of 1882 apply to the Territories and have no force in the States.

Previous to the passage of the law of 1862, which was specially framed against a part of the religion of the Latter-day Saints, there was no statutory law against a man's marrying or living with more wives than one in Utah. The laws of the Territory contained nothing on this matter, and there was no other law in

force in the Territory but those of Congress, which, like the Utah laws, were silent on the subject.

But how about the common law? We answer there was no such thing as the crime of bigamy, as defined in English and American statutes, known to or punished by the common law. If there was, let those who claim its existence tell us what was its penalty. Let a case be cited in which a man or woman was ever tried and punished under common law provisions for bigamy or polygamy. If Judge Powers or Judge Hays knows of such an instance, let it be referred to in some future sermon from the bench. Bigamy was declared an offense in English criminal law by the statute of James I. c. 11, which made it a felony.

It was previously an offense against canon law, that is, ecclesiastical law, but that was not common law. If that is the law to which those lecturing judges refer, it will clip a good deal closer than they would like. Bigamy, in the canon law, was committed when a man married a second wife after the first was dead. It meant marrying two wives under any circumstances whatever, and even marrying a widow. Will Judge Powers or Judge Hays or any other pretender that old English law prevails or has prevailed here, contend that the canon law is or ever was binding in the United States? If so what about men who marry widows, and widowers who marry after the first wife's decease?

Senator Edmunds, during the debate on his new anti-"Mormon" bill, had to meet some arguments based on ignorance of the common law. And here is what he said, as reported in the *Congressional Record*.

"At the common law there was not any punishment for polygamy or bigamy at all, and therefore the common law never had any such cases to deal with."

Although Senator Edmunds knows very little about Utah and its laws, as evidenced by his provisions to repeal Utah statutes that have no existence, it will not be contended that he does not know more about constitutional and general and common law than a \$3,000 Territorial Associate Justice. But if he is right, then the lecturing judicial lecturers of Utah and Idaho are certainly wrong.

Another point in Judge Powers' discourse to Mr. Tracy was this:

"The Mormon people removed from the United States into this Territory while it was a part of Mexico, but they came into this Territory subject to the laws of our sister republic, and polygamy was an offense against the laws of Mexico, then, as it is to-day."

Wrong again, Judge. The "Mormon" people came here as citizens of the United States, unfettered the Stars and Stripes on Ensign Peak, had five hundred able-bodied soldiers marching against Mexico in aid of this Government, and organized at once a provisional local government as part and parcel of the American Union. From 1848 to 1862 they were not amenable to any law against bigamy, for there was none in existence that applied to them. When the treaty of Guadalupe Hidalgo was signed, they were not on Mexican but United States territory, and the United States had no law on this subject until 1862. And, further, there was no law against polygamy that applied to Utah, until March 22, 1882. Will the Judge please make a note of that?

Judge Powers, it is evident, has not studied Mexican laws in relation to marriage, or he would not perhaps be so reckless in stating their application to "Mormon" plurality of wives. But we do not care to discuss that matter now, for, as we have proven, it cuts no figure in the question.

The fact remains, as claimed by the "Mormon" people, that there was no law against the practice of their religious system of marriage until the Act of 1862 was passed, with a special view to operate against "an establishment of religion and prohibit the free exercise thereof." Those who entered into its practice before that time, then, violated no human law, but, as they claim and verily believe, obeyed a divine law. The endeavors of judges and others to make it appear to the contrary, are only exhibitions of ignorance and an overweening desire to attack a people unassailable except by quibbles, misstatements and strained, partial and contradictory constructions of laws purposely framed to ensnare them. A little common fairness would be a good thing to mix with the interpretation and administration of both statutory and common law.

A PROMISE OR A PRISON.

IN sentencing C. H. Greenwell on Thursday, Judge Powers was both angry and inconsistent. He had pronounced judgment against Mr. Tracy, of six months imprisonment without fine, because he had given the officers no trouble. In Mr. Greenwell's case the defendant had given them even less trouble, for he had gone before the grand jury and furnished them the information they wished, and had testified against himself at the trial. Yet he was fined \$300 as well as imprisoned for six months. What for? Because he would not make any promises as to the future. But neither would Mr. Tracy make any such promises.

The only apparent reason for the difference made in the sentences, was the irritation of the Judge at the answers of Mr. Greenwell to the questions he propounded to him, in regard to influences the Judge supposed to have been brought to bear to urge him not to make any promises. The defendant declared, after saying he had no statement to make as to the future, that he had not been requested or instructed to take that course, that he did it of his own free will and without fear of any consequences, or of the manner in which he would be regarded by the community if he made such promises as the Court desired.

The Judge seemed nettled by this, as if he expected to elicit from the defendant some admission reflecting upon the "Mormon" people. And steeling his heart against the defendant, he pronounced the full penalties of fine and imprisonment, and announced for the information of all offenders, what they might expect if they had no promises to make; also that the Court would be glad to extend mercy to those who would make promises for the future, whether they were charged with larceny, burglary, murder, polygamy or cohabitation. We take the Judge's remarks as reported in the *Ogden Herald*. Note how he grades the offenses. Commencing with larceny he goes up to murder, and rises to cohabitation as though in his eyes that offense stood at the head of the criminal catalogue.

This punishment, which many of our brethren are undergoing simply because they will not promise to do something that no one seems to understand, is unjustifiable by law or justice. Penalties are for past infractions of law, not for failure to make promises for the future. No court has the right to punish any one because he will not make agreements to suit the pleasure of the Court. There is no such thing in the law. There is no such thing in justice.

It speaks loudly for the rectitude of those gentlemen who have gone to prison because they would not give their word to do a thing which no one has a right to demand of them. They might make a promise, pass their word, even if they had no intention to keep it or consider it binding, and thus escape punishment. Some of them have been approached with inducements to "just give their word," no matter what they should do afterwards. But they preferred to make no promise in word which they might afterwards break in practice, even though they may have determined then inselves to avoid any infraction of the law in future.

And who can tell what is the meaning of "obeying the law as construed by the courts?" The law has been differently construed according to every different case. The courts are not agreed among themselves as to any settled meaning of its terms. It has been rendered to mean one thing yesterday, another thing to-day, and a different thing to-morrow. A promise to obey it in the future, when a man imagines he has been keeping it in the past, and cannot tell how many new and contradictory constructions may yet be put upon it, would be such an uncertain thing that no one who cares for his word would be willing to bind himself by it.

Why the law is handled, it is a puzzle and a snare. There are men condemned to-day who have honestly kept the law as it was construed at first by the courts. Others have kept it as they understood its meaning themselves. But this does not count. There are men at large who are living as the Court required some time ago, but who are liable to indictment to-day because the Court has turned a flip and double summersault and given a totally different construction to the law.

There is a feature in this promise-demanding that is worthy of consideration by all who have anything to do with it. It is illustrated in the case of Amos Maycock, who has gone to the Pen, because he would not make promises. When privately approached with propositions in regard to the future, he remarked: "There are three others who have something to say about this. It does not rest alone with me. There are three of us interested. What will my wives say, if I am willing to break the covenants with them?" Yes, indeed. When good and pure women, who have lived with a man for many years under covenants of marriage considered sacred by all the parties, are in danger of being thrust away as though they were polluted, have they no voice in what their husband shall do? They are pledged together before heaven for time and eternity, and it will be found that there are very few men in this community who will make any promises that will involve repudiation and damnable treachery, towards wives and mothers who have devoted the best years of their lives and affections of their souls to the men who are asked to dishonor them and cast them off.

Until the courts can settle the meaning of the law which they wish men to agree to keep, and can entertain some respect for the feelings of humanity, and show some sense of justice to a people who have broken no law with criminal intent, it will be in vain that they will lecture and scold and berate men for their firmness, and punish them with all the penalties the law permits because they will not bind themselves by uncertain promises.

Palpitation of the Heart.

All other remedies may fail; but Syrup of Prunes is a certain cure. Sold by Z. C. M. I. Drug Store.

MISSOURI MEMORIES.

WE have received a copy of the *Liberty Tribune* published in Liberty, Clay Co., Mo., probably the oldest paper published in that region, for it is now in its fortieth volume, which, among other wood-cut engravings illustrative of local scenes, contains one of the "old jail" in Liberty with the following letter-press description and history of it:

"This, the first jail built in Clay county, is a strong unpretending structure, two stories in height, and about twenty-two feet square. It has been out of the use for which it was constructed about thirty years; instead of confining criminals it is used to hold ice. The first story may be properly termed a dungeon. The door is an old fashioned oaken one, studded with heavy wrought nails; on the north and south sides there are two small, grated windows to let in the light and fresh air. The building was constructed in the year 1835 and cost less than \$500. The old gentleman who built it could only recall the year by the fact that he 'knew it was built the same year the stars fell.' This antique edifice may be said to be historic. In the year 1838 Joe Smith, the famous prophet of the Latter-day Saints, or Mormons, was immured within its walls."

The memories which this latter allusion is calculated to revive in the minds of old-time Latter-day Saints are not apt to be very pleasant. It was in this place that Joseph Smith, Hyram Smith, Sidney Rigdon, Lyman Wight, Caleb Baldwin and Alexander McElrath were confined for a period of six months after their mock trial in Richmond before Judge Austin A. King. They were charged with treason and General Doniphan, who was employed as an attorney by the prisoners advised them to make no defense, saying "though a legion of angels from the opening heavens should declare your innocence the court and populace have decreed your destruction." The Judge also during the trial declared there was no law for the "Mormons" in the State of Missouri; that he had sworn to see them exterminated and the Governor's order executed to the very letter and he would do so.

The treason of which they were convicted consisted in their believing in the Bible. They were asked during their trial if they believed in the 7th chapter of Daniel, which alludes to the kingdom of God being established, and "the dominion and the greatness of the kingdom" being given to the Saints of the Most High, and on their admitting a belief in it, the Judge turned to the clerk and said, "Write that down; it is a strong point for treason!"

It was in this same Liberty Jail that the brethren whose names have already been mentioned were subjected to the most inhuman treatment that the ingenuity of demons could devise. For five days they were furnished with what their guards jocularly called "Mormon" beef to eat, which was nothing else than human flesh, probably the flesh of some of their brethren who had been killed, and they had either to eat this or go without food, except a little corn bread. None of them ate of the flesh, except Lyman Wight, the others preferring to fast. Nor was this the only atrocity perpetrated upon them while there, for they were given poison in their food three or four times, and would doubtless have died from its effects had it not been for the power of the Almighty being interposed in their behalf. As it was, it acted as a most powerful emetic, and after they had ceased vomiting, they would lie in a stupor for days, scarcely knowing what took place about them; or caring to live.

If the present inhabitants of Liberty know of these things they ought to never think of that jail but with a sense of the keenest shame. It ought to remain to them a standing reproach for the dark deeds perpetrated within its unallowed precincts, and the inhuman treatment to which inspired servants of God were there subjected.

And what had those men or the Saints of whom they were leading members, done, that they should have these and the thousand other indignities heaped upon them which they had to bear? Trace back the case against them to its inception, and what do we find it to consist of? When the mob militia, numbering some thousands, surrounded Far West, and the leading brethren, betrayed into their hands through the treachery of Colonel Hinkle, had been condemned to be shot by the mock court-martial, Joseph Smith asked General Moses Wilson what they had against him, as he was not conscious of having done anything to deserve such treatment. He reminded him that he had always been a supporter of the Constitution and of democracy, when the murderous, stony-hearted General replied, "I know it, and that is the reason why I want to kill you, or have you killed."

General Clark, of odious memory, who died in Missouri not long since, arrived at Far West with the Governor's exterminating order after the seige and while the leaders were being hurried off as captives to Jackson County. He delivered an address to the people, in which, among other things he said:

"It now devolves upon you to fulfill the treaty that you have entered into, the leading items of which I now lay before you:

"The first of these items you have already complied with—which is, that you deliver up your leading men to be tried according to law. Second, that you deliver up your arms—this has been attended to. The third is, that you sign over your property to defray the expenses of this war; this you have also done. Another thing yet remains for you to comply with; that is, that you leave the State forthwith; and whatever your feelings concerning this affair, whatever your innocence it is nothing to me. General Lucas, who is equal in authority with me, has made this treaty with you. I am determined to see it executed."

"The orders of the Governor to me were that you should be exterminated, and not allowed to remain in the State. And had your leaders not been given up, and the treaty complied with before this you and your families would have been destroyed and your houses in ashes."

"As for your leaders, do not think, do not imagine for a moment, do not let it enter your minds that they will be delivered, or that you will see their faces again; for their fate is fixed, their die is cast, their doom is sealed."

"I am sorry, gentlemen, to see so great a number of apparently intelligent men found in the situation that you are. And, oh! that I could invoke the spirit of the unknown God to rest upon you, and deliver you from that awful chain of superstition, and liberate you from those fetters of fanaticism with which you are bound. I would advise you to scatter abroad, and never again organize with Bishops, Presidents, etc., lest you excite the jealousies of the people and subject yourselves to the same calamities that have now come upon you."

"You have always been the aggressors; you have brought upon yourselves these difficulties by being disaffected and not subject to rule; and my advice is, that you become as other citizens, lest by a recurrence of these events you bring upon yourselves inevitable ruin."

Mark the gravity of the charges herein made or implied! The Saints had excited the jealousies of the people by organizing under Bishops, Presidents, etc., and by being "disaffected and not subject to rule"—in other words, by imagining that they possessed some political rights, and being united in exercising them. For these offenses they must be shot down like dogs; they must have their wives and daughters ravished by the fiends incarnate who assaulted them; they must be driven from one county to another and finally from the State; they must be robbed of \$2,000,000 worth of property and have three hundred of their number killed outright or die from the exposure to which they were subjected; and their enemies, not content with robbing them of all their possessions, must have \$200,000 appropriated to them by the Missouri Legislature to defray the expense of exterminating the "Mormons!" Oh! if there is any sense of honor or shame in Missouri, or in the nation, it ought to be aroused by the contemplation of the cruel barbarities and injustice inflicted upon the Latter-day Saints in that State! And if there is such a thing as divine vengeance it must certainly be visited upon the perpetrators of them!

We might go farther back in the history than the days of Far West and find similar pretenses offered for the desperate opposition to which the Saints were subjected. Before settling in Caldwell County they had dwelt in Clay County, of which Liberty was the capital, and purchased extensive possessions. The other residents of that county demanded their removal, and in a written statement formulated at a mass meeting held in Liberty on the 29th of June, 1836, said:

"These are some of the reasons why these people have become objects of the deepest hatred and detestation to many of our citizens: They are Eastern men, whose manners, habits, customs, and even dialect, are essentially different from our own; they are non-slaveholders, and opposed to slavery; which, in this peculiar period, when abolition has reared its deformed and haggard visage in our land, is well calculated to excite deep and abiding prejudices in any community where slavery is tolerated and practiced. In addition to this they are charged, as they have heretofore been, with keeping up a constant communication with the Indian tribes on our frontier, with declaring, even from the pulpit, that the Indians are a part of God's chosen people, and are destined by heaven to inherit this land, in common with themselves. We do not vouch for the correctness of these statements; but whether they are true or false, their effect has been the same in exciting our community."

What must the people of Liberty now think of the potent reasons here set forth for banishing from Clay County citizens who were doing more towards the development of what was then a wilderness country than any others who resided there, and who were in every way entitled to a peaceful residence and protection in their rights? These reasons are only exceeded in absurdity by those which the people of Jackson County had previously given for expelling the Saints from their midst, and for demolishing their printing office, for breaking into their store and appropriating their goods, for tarring and feathering two of their leading men, for burning their houses, and forcing their delicate women and little children to flee for their lives, shoeless